

obtain competition to the maximum extent practicable for the repurchase. The contracting officer shall cite the Default clause as the authority. If the repurchase is for a quantity over the undelivered quantity terminated for default, the contracting officer shall treat the entire quantity as a new acquisition. If the repurchase is for a quantity over the undelivered quantity terminated for default, the contracting officer shall treat the entire quantity as a new acquisition.

(c) If repurchase is made at a price over the price of the supplies or services terminated, the contracting officer shall, after completion and final payment of the repurchase contract, make a written demand on the contractor for the total amount of the excess, giving consideration to any increases or decreases in other costs such as transportation, discounts, etc. If the contractor fails to make payment, the contracting officer shall follow the procedures in subpart 32.6 for collecting contract debts due the Government.

[48 FR 42447, Sept. 19, 1983, as amended at 50 FR 1745, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

#### **49.402-7 Other damages.**

(a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see 49.402-4), the contracting officer shall promptly ascertain and make demand for any liquidated damages to which the Government is entitled under the contract. Under the contract clauses for liquidated damages at 52.211-11, these damages are in addition to any excess repurchase costs.

(b) If the Government has suffered any other ascertainable damages, including administrative costs, as a result of the contractor's default, the contracting officer shall, on the basis of legal advice, take appropriate action as prescribed in subpart 32.6 to assert the Government's demand for the damages.

[48 FR 42447, Sept. 19, 1983, as amended at 56 FR 15154, Apr. 15, 1991; 60 FR 48250, Sept. 18, 1995]

#### **49.403 Termination of cost-reimbursement contracts for default.**

(a) The right to terminate a cost-reimbursement contract for default is provided for in the Termination for Default or for Convenience of the Government clause at 52.249-6. A 10-day notice to the contractor before termination for default is required in every case by the clause.

(b) Settlement of a cost-reimbursement contract terminated for default is subject to the principles in subparts 49.1 and 49.3 the same as when a contract is terminated for convenience, except that—

(1) The costs of preparing the contractor's settlement proposal are not allowable (see subparagraph (h)(3) of the clause); and

(2) The contractor is reimbursed the allowable costs, and an appropriate reduction is made in the total fee, if any, (see subparagraph (h)(4) of the clause).

(c) The contracting officer shall use the procedures in 49.402 to the extent appropriate in considering the termination for default of a cost-reimbursement contract. However, a cost-reimbursement contract does not contain any provision for recovery of excess repurchase costs after termination for default (but see paragraph (g) of the clause at 52.246-3 with respect to failure of the contractor to replace or correct defective supplies).

[48 FR 42447, Sept. 19, 1983, as amended at 61 FR 39222, July 26, 1996]

#### **49.404 Surety-takeover agreements.**

(a) The procedures in this section apply primarily, but not solely, to fixed-price construction contracts terminated for default.

(b) Because of the surety's liability for damages resulting from the contractor's default, the surety has certain rights and interests in the completion of the contract work and application of any undisbursed funds. Accordingly, the contracting officer shall carefully consider proposals by the surety concerning completion of the work. The contracting officer shall take action on the basis of the Government's interest, including the possible effect of the action upon the Government's rights against the surety.